

COMPENSATORY TIME

■ Private Sector

Permissible in private sector only for those employees exempt from overtime provisions of the law.

** Use of comp time for Administrative, Executive or Professional employees may jeopardize salary status.

■ Public Sector

Permissible in public sector for exempt and nonexempt employees following rules and regulations established under the FLSA.

** Non-exempt employees accumulate comp time at 1-1/2 rate for hours over 40 within a workweek.

EXECUTIVE EMPLOYEES

For an employee to be exempt as a bona fide executive the following criteria must be met:

- 1) The employee's primary duty must be management of the enterprise, or of a customarily recognized department or subdivision; and
- 2) The employee must customarily and regularly direct the work of at least two or more other employees; and
- 3) The employee must have the authority to hire or fire other employees or the employee's suggestions and recommendations as to the hiring, firing, advancement or promotion or any other change of status of other employees is given particular weight; and
- 4) The employee customarily and regularly exercises discretionary powers; and
- 5) The employee must devote no more than 20 percent (less than 40 percent if employed by a retail or service establishment) of his or her hours worked to activities not directly and closely related to the management duties; and
- 6) Must be paid on a salary basis at a rate of at least \$155 a week exclusive of board, lodging or other facilities.

ADMINISTRATIVE EMPLOYEES

For an employee to be employed in a bona fide administrative capacity, the following criteria must be met:

- 1) The employee's duty must be either:
 - a) Responsible office or nonmanual work directly related to the management policies or general business operations of the employer or the employer's customers'; or
 - b) Responsible work that is directly related to academic instruction or training carried on in the administration of a school system or educational establishment; and
- 2) The employee must customarily and regularly exercise discretion and independent judgment, as distinguished from using skills and following procedures, and must have the authority to make important decisions; and
- 3) The employee must:
 - a) Regularly assist a proprietor or a bona fide executive or administrative employee; or
 - b) Perform work under only general supervision along specialized or technical lines requiring special training, experience or knowledge; or
 - c) Execute under only general supervision special assignments; and
- 4) The employee must not spend more than 20 percent of the time worked in the work week (less than 40 percent if employed by a retail or service establishment) on nonexempt work - that is, work not directly and closely related to the administrative duties; and
- 5) The employee must be paid on a salary or fee basis at a rate of not less than \$155 a week exclusive of board, lodging, or other faculties, or in the case of academic administrative personnel in private schools, the salary requirement for exemption must be at least \$155 or alternately, academic administrative personnel may be paid in salary which is at least equal to the entrance salary for teachers in the employing school system or educational establishment or institution.

ADMINISTRATIVE EMPLOYEES (Continued)

■ Job Titles Insufficient as Yardsticks

The employees for whom exemption is sought under the term "administrative" have extremely diverse functions and a wide variety of titles. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the duties, responsibilities and salary meet all the requirements of the appropriate section of the regulations and a title alone is of little or no assistance in making this determination.

Some examples of employees who are not exempt:

- ◆ Time study personnel
- ◆ Bank tellers
- ◆ Bookkeepers
- ◆ Private secretaries
- ◆ Receiving and shipping clerks

In school systems persons performing non-academic duties such as

- ◆ Jobs relating to building management and maintenance
- ◆ Jobs relating to the health of students and staff members such as social workers, lunch room manager or dietitian.

Some of these employees in school systems may otherwise qualify for exemption as "executive", "administrative" or "professional" employees, but not as academic administrative personnel, if all the requirements are met.

PROFESSIONAL EMPLOYEES

This exemption includes the learned, the artistic, and the teaching professions.

Except as otherwise noted below, a professional employee must meet all these tests to be exempt:

- 1) The primary duty must be either:
 - a) Work requiring knowledge of an advanced type in a field of science or learning, customarily obtained by a prolonged course of specialized instruction and study;
or

PROFESSIONAL EMPLOYEES (Continued)

- b) Work that is original and creative in character in a recognized field of artistic endeavor and the result of which depends primarily on the employee's invention, imagination, or talent; or
 - c) Work as a teacher certified or recognized as such in the school system or educational institution by which employed; and
- 2) The employee must consistently exercise discretion and judgment; and
- a) Must do work that is predominately intellectual and varied, as distinguished from routine or mechanical duties, and
- 3) Must not spend more than 20 percent of the time worked in the workweek on activities not essentially a part of and necessarily incident to the professional duties, and
- 4) Must be paid on a salary or fee basis at a rate of not less than \$170 a week (or \$150 a week in Puerto Rico, the Virgin Islands and American Samoa) exclusive of board, lodging, or other facilities.

Note - this salary requirement does not apply to:

- 1) An employee who is the holder of a valid license or certificate permitting the practice of law or medicine and is actually engaged in such practice; or
- 2) An employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program; or
- 3) An employee employed and engaged as a teacher in a school or educational institution.

■ Special Proviso for High Salaried Professional Employees:

The 20 percent test on nonexempt work does not apply to a professional employee who is paid on a salary or fee basis at a rate of at least \$250 a week exclusive of board, lodging or other facilities provided:

The employee's primary duty consists of work requiring knowledge of an advance type in a field of science or learning, or work as a teacher in an activity of imparting knowledge, which requires consistent exercise of discretion and judgment; or

The primary duty is artistic work that requires invention, imagination, or talent in a recognized field of artistic endeavor.